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SUPREME COURT OF THE UNITED STATES

October Term, 1935.

No. 127.

RADIO CORPORATION OF AMERICA,
Petitioner-Defendant,

v.

RAYTHEON MANUFACTURING COMPANY,
Respondent-Plaintiff.

BRIEF FOR RESPONDENT-PLAINTIFF

This case is before this Court under *United States Code*, Title 28, section 347 (*Judicial Code*, section 240 as amended) on a petition filed on June 14, 1935, granted on October 14, 1935, to determine the correctness of the final decree entered on February 19, 1934 in the District Court of the United States for the District of Massachusetts (R. 39) and the proceedings leading thereto, ordered vacated on April 8, 1935 by the final decision of the Circuit Court of Appeals for the First Circuit (R. 76—76 F. (2d) 943), on which mandate has been stayed.

The respondent-plaintiff Raytheon Manufacturing Company submits that the District Court was in error and was so held rightly by the Circuit Court of Appeals, because: —

(1) As neither the plaintiff nor the defendant set up an equitable right or asked for an equitable remedy in this action at law, nothing should have been transferred to the equity side of the court;

(2) If a plaintiff's seal on the release on which the defendant relies prevents a court of law from holding it void of force in a court of law, the plaintiff is entitled to trial by jury as to whether the release on which the defendant relies, was sealed by the plaintiff;

(3) A release under seal may be held void for enforcement by a court of law on the facts alleged by the plaintiff and not yet heard by any court.

STATEMENT OF THE CASE

The first and underlying error but not the only error, it is respectfully submitted, in the District Court was the allowance on November 8, 1932 (R. 30) of the defendant's motion to transfer the case to equity for a preliminary hearing on the issue of the validity of the release executed by the plaintiff (R. 28).

It is assumed without further argument that the Circuit Court of Appeals had jurisdiction, before the final judgment in the action at law, to consider this error, as decided in *Enelow* v. *N. Y. Life Ins. Co.*, 293 U. S. 379.

On December 14, 1931, the plaintiff Raytheon Manufacturing Company, a Massachusetts corporation, become by change of name, Raytheon, Inc., and incorporated, also, as a Delaware corporation, brought and entered this action at law (R. 2), to recover under *U. S. Code*, Title 15, c. 1, s. 15, the sum of $15,000,000 from the defendant Radio Corporation of America for treble the damages sustained by the plaintiff from a violation of the *Anti-trust Laws of the United States*, sections 1, 2, and

14, of that chapter, on a cause of action, wholly accrued to the Massachusetts corporation before May 28, 1928, which became on that date the property of the Delaware corporation, for whose benefit the action was brought (R. 12).

The declaration alleged that prior to 1926, the defendant and others formed a combination and conspiracy in restraint of trade and an attempt to monopolize, a monopolization, a combination and conspiracy with others to monopolize trade in violation of sections 1 and 2, and as a part thereof, in violation of section 14, the making of leases and contracts on condition that the lessee or licensee shall not use or deal in goods of competitors (R. 4, 14).

After alleging the cause of action complete in the early part of 1928 (R. 10, 20) and in order to render pertinent, decrees and transactions between the defendant and third parties otherwise impertinent as *inter alios acta*, the plaintiff alleged the fact that the plaintiff and its Delaware corporation had been compelled by the defendant to execute a "void" release and that "the plaintiff has never executed a valid release of said claim" (R. 10, 21, par. 37). The defendant-petitioner invents three descriptions of these allegations which, it is respectfully submitted, are unfounded. (1) This is not an allegation of a release voidable because of economic pressure. It is an allegation of a release void, not merely because of economic pressure but because of the exercise of an illegal power to compel the plaintiff to give up, for nothing, more than $9,000,000. (2) It is not an anticipatory replication setting up, by short cut, a prayer in equity for cancellation of the release. It is only a necessary introduction to the next allegations. It is made for that purpose, only. The carefulness of the draughtsman

of the declaration as a whole, indicates that if an application for equitable relief of cancellation had been intended it would have been stated. (3) There is no allegation that the license at the defendant's established rate of royalty was void or voidable. It is the release given for nothing which is alleged to be void.

The plaintiff next alleged that about March 19, 1929, at the time of the execution of the void release the defendant agreed with the plaintiff, that, notwithstanding the release, if any other claimant for damages, resulting from the unlawfully conditioned licenses which had then been enjoined preliminarily, by the District Court of the United States for the District of Delaware, shall obtain a pecuniary recognition of its claim in consequence of judgment or agreement of settlement or otherwise, the plaintiff shall become entitled to assert its claim for damages notwithstanding the release to an amount up to the largest amount obtained by any other claimant and that the defendant shall not be entitled to plead the release as a bar (R. 11, 21).

The plaintiff next alleged that the defendant had in September or October, 1931, accorded to a claimant such pecuniary recognition in not less than $1,600,000 and past royalties in addition, so that the plaintiff was entitled to recover not less than $1,600,000 and the amount of remissions of royalties even if the release were valid, and that as it was void the plaintiff was entitled to recover not less than $3,000,000 trebled to not less than $9,000,000 (R. 22).

It is noteworthy that the declaration does not allege that either the release or the contemporaneous agreement was under seal. It does not allege that there was any invalidity in the license or in the contemporaneous agreement. It does allege that the release is void and that the

plaintiff has never executed a valid release of the claim (R. 10, 21).

It is noteworthy that the plaintiff does not allege any right in equity to be relieved from the legal effect in a court of law, of this void release.

The defendant in answer denied all the plaintiff's allegations and alleged, affirmatively, that on or about March 19, 1929 the plaintiff had released the defendant from all claims, for a good and valuable consideration, and that the release was under seal and was not executed under duress (R. 28). Manifestly, this was an allegation of a legal bar at law, in a court of law, to any recovery by the plaintiff.

The defendant alleged no equitable right and no right to relief in equity. The defense of release was pleadable as a bar at law before defendants were given any right to plead equitable defences at law.

The answer did not make profert of the release or set it out by copy.

On October 10, 1932, the defendant filed a motion to have the case transferred from the law side to the equity side of the court for a preliminary hearing upon the issue of the validity of the release executed by the plaintiff.

It is noteworthy that this was an application by the defendant to have a court of equity determine the validity of a legal bar which the defendant had set up.

On November 8, 1932, Judge Lowell, sitting in the Motion Session, allowed this motion (R. 30). He heard no evidence (R. 41). He inspected "the release referred to in the motion". What he inspected was two papers, one a formal license and the other an informal memorandum (R. 42, 52).

The formal license (R. 42) was a license by the defendant and others to the Delaware corporation. It

contained a general release by that corporation (R. 50, section 2). The Massachusetts corporation is not a party to that release. The paper asserts that the parties have affixed to it their corporate seals. Seals appear as affixed (R. 52).

The informal memorandum (R. 52) did not state who were the parties to it. It contained a clause that notwithstanding the release, the licensee shall still be entitled to assert its claim for damages arising from the operation of the alleged unlawful condition in prior licenses, which had been enjoined, if other such claimants obtain pecuniary recognition for such claims (R. 53). It then contained a clause that the licensee and the plaintiff Raytheon, Inc. jointly and severally release the licensors from all liabilities. The claim in suit was then the property of the licensee, the Delaware corporation and no longer the property of the Massachusetts corporation. It was the only claim arising from the cause described, which the Delaware corporation had.

The paper contains nothing to suggest that it is to be sealed, or that it is to have the effect of a sealed instrument, or that it ever has been sealed by the plaintiff or by the defendant. It bears a seal of the General Electric Company. The name Raytheon, Inc. appears as if affixed by D. T. Schultz, Asst. Treas. (R. 54).

At the hearing on the motion the plaintiff claimed that the plaintiff was entitled to trial by jury on the question of the validity of the release (R. 71). This meant its validity at law. If a seal made the release incontestible at law, this was a claim for jury trial on the issue whether or not the plaintiff had sealed the release.

The record does not indicate whether Judge Lowell granted the motion (1) because of an opinion that the release by the Delaware corporation contained in the

license purporting to be sealed, was operative to release the claim of the Massachusetts corporation of which the Delaware corporation was the owner, or (2) because he was of opinion that the unsealed contemporaneous memorandum was an unattackable bar at law, or (3) because he was of opinion that this unsealed memorandum was deemed to be sealed by the plaintiff because the General Electric Company had sealed it, or (4) because he was of opinion that it was to be deemed sealed by the plaintiff because it was contemporaneous with the license to which the plaintiff was not a party, or (5) because of some other reason. No evidence had been offered that the plaintiff, as alleged in the motion, had adopted the seals of the other parties who signed the release (R. 41, 29). There was no evidence that D. T. Schultz, whose name appeared on the paper (R. 54), had any authority to seal an instrument for the plaintiff, or to adopt a seal for the plaintiff (R. 41).

On April 4, 1933, Judge Lowell denied a motion, made by the plaintiff, without waiver of its objections to jurisdiction, for the framing of an issue to be tried by the jury (R. 35, 31).

On January 3, 1934, the plaintiff expressly disclaimed any right or remedy in equity to be relieved from such operation as the release would have at law had there been no duress (R. 36). The plaintiff alleged that the issue as to duress was whether the purported release was obtained in fact by duress of a power obtained by the defendant by unlawfully restraining interstate trade and substantially lessening competition therein in violation of sections 1, 2, and 14, and, if so, whether a court of law, not equity, of the United States will adjudge originally valid a release so obtained notwithstanding such duress (R. 37). The plaintiff alleged that a court of equity was

without jurisdiction to try the issues when presented in an action at law in which neither party claims an equitable right or seeks an equitable remedy. The plaintiff reiterated a claim to a right to trial by jury on this issue, which arises in an action at law (R. 37). The plaintiff moved the court to rescind or to vacate or to supersede the order of transfer to equity (R. 36). Without hearing evidence (R. 55), this motion was denied (R. 38).

On February 12, 1934, the plaintiff, still insisting on its objection to the jurisdiction and to the order of transfer, filed a motion by which, "The plaintiff hereby discontinues, becomes nonsuit and dismisses before any hearing in equity any and all allegations and claims that in equity the release alleged in the plaintiff's declaration and in the defendant's motion for transfer is invalid in equity more than at law and that the plaintiff has any equitable right to a decree declaring said release invalid, or to any relief in equity." (R. 38). Plaintiff admitted that it had no right in equity or to any remedy therein because it had a plain, adequate and complete remedy at law, in that a court of law will not give force or effect to a release obtained in the manner alleged and having, if enforced, the unlawful effect alleged (R. 38). The plaintiff alleged that it "tenders in equity no evidence in support of any right to relief in equity and now has no such evidence and, therefore, before hearing, announces the conclusion of its evidence in equity in support of any such right in equity, to the same extent and with the same effect as if the court in equity should now have set this case for hearing of evidence against the plaintiff's protest. This suit in equity is now before hearing ripe for final disposition." (R. 38).

On the basis of these allegations the plaintiff moved for a final decree dismissing said suit in equity for the

reasons aforesaid or terminating said suit in equity in such manner as in this state of the record equity requires and thereupon returning the papers originally filed in law to the court of law.

It is well established that a party suing for relief in equity may as of right dismiss his application before any proceedings thereon have taken place, in equity.

Ex parte Skinner & Eddy Corp., 265 U. S. 86, 93.

On February 19, 1934, Judge Brewster heard this motion without the introduction of evidence (R. 56). The plaintiff urged that *the plaintiff could not try the question of fact in equity and at the same time save the right to try it over again before a jury* (R. 56), and that no decree could be entered against the plaintiff (R. 57) beyond dismissal.

Thereupon, the defendant became the actor and asked the court to enter, not a decree that there was in fact no equitable defence to the release, but a final decree adjudging the release to be valid and binding (R. 58, 60). The plaintiff objected to the change to the decree presented by the defendant from the decree sought by the plaintiff's motion (R. 60).

Thereupon, on February 19, 1934, over the exception of the plaintiff, the court entered the final decree drawn by the defendant, which recited that the case had come on to be heard upon the issue of the validity of the release executed by the plaintiff (R. 40). There had been no hearing on that issue. It adjudged that the release set forth in the defendant's answer and in the defendant's motion to transfer the case to equity, and described in paragraphs 36 and 37 of the plaintiff's declaration, is valid and binding (R. 40). It ordered the case back to

law for further proceedings in accordance with this decree (R. 40). Paragraphs 36 and 37 of the declaration are those which describe the release and not the license. They are not the one which describes the informal agreement made at the same time. That is set out in paragraph 39 (R. 11, 21). The answer alleged a release under seal. By implication, it referred to a document which bore the seal of the plaintiff. As there was no profert or copy, the release alleged was not defined in the answer. The motion for transfer referred not to any license, but to the void release alleged in paragraphs 36 and 37 of the declaration, and not to the informal agreement in paragraph 39. The motion said that the release was under seal in that the plaintiff adopted the seals of the other parties who signed the release. This must mean the formal license to which the nominal plaintiff was not a party. The informal agreement did not have seals upon it (R. 54). It appeared to bear the one seal of the General Electric Company and no others. The formal license appeared to bear four seals of the only four parties named in it as parties (R. 52, 42).

The record throws no further light on whether the final decree means that the only paper bearing seals, and which bears the name of the Delaware corporation and not that of the plaintiff, is valid and binding upon the plaintiff because the plaintiff is suing for the benefit of the Delaware corporation, the owner of the claim, or whether the court has adjudged that the informal agreement not bearing seals but bearing the name of the plaintiff, is valid and binding. The distinction may prove to be important, because the defendant-petitioner made the unconscionable contention in its brief in support of its petition for certiorari (p. 23) that the distinction should be so far maintained between the nominal plain-

tiff, the Massachusetts corporation, and the virtual plaintiff, the Delaware corporation, whose property the claim was, that the virtual plaintiff who owned the claim would be barred by the release signed by the nominal plaintiff but could not have the reserved rights for upwards of $1,600,000 because the reservation did not refer to this claim for damages although it was then owned by the virtual plaintiff, the Delaware corporation (R. 12).

If this unconscionable contention was sound, as it is submitted that it is not, this action of the Delaware corporation in the name of the Massachusetts corporation would be at an end without any evidence ever having been heard on any subject of claim or defence. The result would be accomplished in an action at law without trial by jury and without waiver thereof.

On April 8, 1935, on appeal to the Circuit Court of Appeals, that court decided that the plaintiff sought no equitable relief and that the release was set up as a defence in the action at law (R. 70, lines 26-27), and that even if the release was treated as a document under seal, "Neither does it follow that an order transferring the case from law to equity against the protest of the plaintiff can be sustained when no affirmative equitable relief is sought." (R. 72, lines 34-37), and that, "We hold that the validity of the contract is the primary issue to be tried and that it raises a mixed question of law and fact entitling the plaintiff to a trial by jury. The order transferring the action at law to equity filed November 8, 1932, cannot be sustained." (R. 75, lines 32-34). Accordingly, the court decided that the several orders should be vacated and the case remanded to the District Court.

FIRST

AS NEITHER THE PLAINTIFF NOR THE DEFENDANT SET UP AN EQUITABLE RIGHT OR ASKED FOR AN EQUITABLE REMEDY IN THIS ACTION AT LAW, NOTHING SHOULD HAVE BEEN TRANSFERRED TO THE EQUITY SIDE OF THE COURT.

In its petition for certiorari (p. 3) and in its brief now filed, the defendant alleges as the only statute involved, section 274 (b) of the Judicial Code which is there quoted as follows: — "In all actions at law equitable defenses may be interposed by answer, plea, or replication without the necessity of filing a bill on the equity side of the court. The defendant shall have the same rights in such case as if he had filed a bill embodying the defense of seeking the relief prayed for in such answer or plea. Equitable relief respecting the subject matter of the suit may thus be obtained by answer or plea. In case affirmative relief is prayed in such answer or plea, the plaintiff shall file a replication. Review of the judgment or decree entered in such case shall be regulated by rule of court. Whether such review be sought by writ of error or by appeal the appellate court shall have full power to render such judgment upon the records as law and justice shall require." (p. 3.)

If the writ of certiorari in this case was granted in reliance on the assertion that this is the statute involved, it is respectfully submitted that it was granted through a misapprehension.

The only "answer, plea, or replication" which sets up the defence of a release, is the defendant's answer (R. 28). It sets the release up as a legal bar. If it is a valid bar, it is because of its operation at law. The defendant does

not require any assistance from a court of equity to have a court of law apply that defense.

The plaintiff has not claimed any right to relief in equity from the legal effect of the release. The plaintiff's declaration contains no such request (R. 10, 21). The allegations concerning the release, in the declaration are not in anticipation of a defence. They are made as a necessary introduction to the allegations which follow them, of facts which otherwise would be irrelevant, which show that the plaintiff is entitled to a recovery in a limited amount even if there is a valid release. Paragraph 39 of the declaration (R. 10, 21) would be unintelligible without a prior allegation of a release. The allegations of paragraph 39 allege a parole agreement and not a specialty.

As it was necessary to allege the release as an introduction to the allegations of paragraph 39, those allegations were made. If the release had been alleged without an allegation that it was invalid at law, it might have been argued that the allegation implied a release valid at law. The allegation that the release is void at law is to prevent such an argument. The words, "at law" were not used because they were unnecessary. This was a declaration in an action at law. The plaintiff did not say that the release was valid at law, but avoidable in equity. The plaintiff did not ask to have the release avoided. The plaintiff alleged that it was "void". A release which although avoidable in equity, is an unattackable bar at law, is not void. The allegations are that the release is "void", and that "the plaintiff has never executed a valid release of said claim" (R. 10, 21).

It is immaterial in the present discussion whether or not the plaintiff can prove these allegations. They are the allegations which the plaintiff has made in a court

of law. They have not been tried. They contain no intimation that the plaintiff seeks relief in equity from a release valid at law.

The defendant argues that a release procured by duress is voidable and not void. It is submitted that on the facts alleged in this declaration this particular release started out absolutely void. However, it is unnecessary to pursue this argument, because the plaintiff has alleged that the release is, not voidable but, "void", and that "the plaintiff has never executed a valid release of said claim". If the plaintiff cannot prove that it never has executed a valid release, this is not a reason for sending the plaintiff into equity.

The brief for the petitioner-defendant calls attention to the rule that allegations of mere conclusions of law not supported by allegations of fact are not admitted on demurrer. That brief also asserts that "'there is an entire absence of anything to show that in practical operation this contract was not entirely favourable and fair to the licensee.'" (p. 15) The allegations of the declaration are, in substance, that the defendant conspired to monopolize this commerce in all kinds and parts of radio communicating devices, and that pursuant to that conspiracy and for no consideration it took away from a competitor in this commerce upwards of $9,000,000 of capital through the device of compelling that competitor to execute, for nothing, an apparent release of a valid claim for more than that amount, after it had first completely destroyed that competitor's business at a time when it then had a present value in excess of $3,000,000 and an established net earning power in net profits of $454,935 a year (R. 4, 15): If these be not allegations that this contract "was not entirely favorable and fair to the licensee" the art of pleading is becoming refined at the expense of strength.

If it were important to argue the question, it is noteworthy that this is not a case where an act of avoidance by the plaintiff was necessary. There was no consideration for the plaintiff's alleged release. There was no consideration to return, to perfect avoidance. The defendant's unlawful power has never ceased. The release was as void at the beginning as it could ever become or as any act of the plaintiff's could make it. But this is all apart from the matter under discussion.

If it is the law, which the plaintiff submits that it is not, that the release cannot be attacked in a court of law on the facts alleged by the plaintiff, such is the law, without the interposition of a court of equity. The court of law is all-powerful to apply it. The court of law does not need the help of a court of equity. The defendant does not need the help of a court of equity. The plaintiff does not ask the help of a court of equity and declined to have that help thrust upon it.

To make it emphatic that the plaintiff did not ask to be relieved by equity from a defense good at law, the plaintiff disclaimed of record any such attempt (R. 36, lines 30-31; R. 38, paragraph marked 1).

When the defendant in its petition for certiorari at page 3, cited the above-quoted section 274(b), it intimated that somebody by answer, plea, or replication, had set up a short-cut bill in equity in a pleading at law. The petition and supporting brief is silent as to who had brought that short-cut bill in equity.

No one had.

The plaintiff's allegation in a court of law to a court of law for trial by a court of law is, that the release is void at law and that the plaintiff has executed no release valid at law. When it comes to a trial before a judge and jury at law, if the plaintiff cannot maintain these

allegations the plaintiff will have failed to prove the plaintiff's allegations. Whether that is because it has not evidence sufficient to convince a jury, or because a court of law will not permit that evidence to be introduced or will not permit the jury to pass upon it after it has been introduced, are questions which the court of law at the trial can decide, without the need of any help from a court of equity.

Because the plaintiff unequivocally alleged only its rights at law and the defendant unequivocally alleged only its rights at law, no use has been made of section 274(b) permitting an equitable defense in an answer, plea, or replication, and there was nothing which could be transferred to a court of equity or of which a court of equity had any jurisdiction.

The gravity of the error into which it is submitted that the defendant has led the District Court, is that when that court had no jurisdiction in equity it has adjudged (R. 40) that the case came on to be heard "on the issue of the validity of the release" when in fact it came on to be heard on the plaintiff's motion to dismiss before hearing (R. 37), and has never come on to be heard on the issue of the validity of the release, and that the court adjudged not that the plaintiff was entitled to no relief in equity from the legal effect of the release at law but that some paper never seen by the decreeing judge is decreed finally to be valid and binding (R. 40).

When in a court of law a plaintiff has alleged that he has executed no release valid in a court of law, and the defendant has alleged that the plaintiff has executed a release valid in a court of law, the issue so made should be decided in a court of law. The decision there may be because the plaintiff's evidence or the defendant's evi-

dence is inadmissible, or because the plaintiff's evidence or the defendant's evidence is insufficient to go to the jury, or because the jury has found one way or the other upon the evidence submitted to it.

It is respectfully submitted that the final decree (R. 40), the order (R. 38) denying the motion to vacate the order of transfer (R. 36), and the order of transfer (R. 30) granting the defendant's motion (R. 28), were errors and beyond the jurisdiction of the court.

SECOND

IF A PLAINTIFF'S SEAL ON THE RELEASE ON WHICH THE DEFENDANT RELIES PREVENTS A COURT OF LAW FROM HOLDING IT VOID OF FORCE IN A COURT OF LAW, THE PLAINTIFF IS ENTITLED TO TRIAL BY JURY AS TO WHETHER THE RELEASE ON WHICH THE DEFENDANT RELIES WAS SEALED BY THE PLAINTIFF.

It is submitted that this is a matter which is unnecessary for consideration because the preceding section by itself calls for the reversal or vacating of the order of transfer and of the subsequent orders in the District Court.

At some places in its brief, it appears to be the position of the defendant that a release not under seal may be attacked in a court of law but that a release under seal not obtained by overpowering physical duress must be enforced by a court of law and that therefore this case must be transferred to equity for a court of equity to determine whether or not, under the circumstances alleged, the release obtained in the manner alleged and its enforcement so far violate public policy and the text or policy of the antitrust laws that a court of equity will permit a court of law to respect public policy and the text and policy of the antitrust laws by declining to give effect to the release. If it is the law that a release not under seal may be attacked at law and one under seal may not be, a court of law cannot lawfully transfer the case to equity until the fact of seal or no seal has been determined in the court of law. On that issue the plaintiff had the right to trial by jury. The plaintiff has never waived trial by jury in this case but at all times has insisted on trial by jury (R. 41).

If the release on which the defendant relies is that contained in the formal license agreement (R. 42-52) the paper relied on appears to have on it the seal of Raytheon Manufacturing Company of Delaware which is the proprietor of the cause of action on which the Massachusetts corporation sues for the benefit of the Delaware corporation (R. 12). The corporation that sealed the release could not sue in its own name at law on the cause of action in suit which had accrued to the Massachusetts corporation. The paper does not bear the seal of the only nominal plaintiff that can maintain the action. The plaintiff is entitled to the verdict of a jury that this paper was not sealed by the plaintiff.

A principal is not liable under a sealed instrument unless he appears by its terms to be a party.

> *C. F. Starita Co., Inc.* v. *Compagnie Havraise Peninsulaire de Navigation a Vapeur*, (C.C.A. 2d-1931) 52 F. (2d) 58, 62.

The plaintiff is also entitled to have the jury, with proper instructions from the court after the evidence has been heard, pass on the question whether this release executed by the Delaware corporation manifested an intention to release the claim of the Massachusetts corporation. If it did not, the sealed paper is an immaterial paper.

If the release on which the defendant relies is the informal agreement (R. 52-54), the plaintiff is entitled to the verdict of a jury that this is not a paper under the seal of the plaintiff. It contains no language indicating an intention to have it a sealed agreement. The plaintiff was not a party to any sealed agreement. The fact that the name of one of the signers has a seal against it does not indicate any intention of the other signers to adopt

or to import a seal. It is common knowledge that papers are drawn preliminarily to have the signatures to them finally appear at the end in the order in which the names of the signers first appear in the instrument but that frequently the signatures are affixed in the proper place not in time order. There is no evidence that the seal of the General Electric Company was on the paper at any time of importance in determining the significance of the conduct of the plaintiff. There is no evidence that the plaintiff knew that General Electric Company was going to add a seal to its own name or even that the license was to bear seals. There is no evidence that D. T. Schultz had any authority to affix a seal of the plaintiff or to adopt another's seal as a seal of the plaintiff.

There has been a long-standing conception of the solemnity added to a document by a seal. There is nothing to indicate that Schultz added any such solemnity.

Decisions (*Jacksonville &c Railway* v. *Hooper*, 160 U. S. 514, 517) in which it has been held that where the paper recited that it was under seal it may be inferred that one party adopted the seal of another, have no bearing, because this paper purported to be a separate informal agreement not under seal. It did not purport to be a modification of the license of the same date. It was a separate agreement. It did not recite that it was sealed (R. 52-54). A signature to it raises no inference in fact or in law, of an intention to have the instrument a sealed instrument of the plaintiff.

If it is possible to say that by any implications the plaintiff sealed this instrument, certainly those implications could not be drawn from the face of the paper. It does not bear out such implications. The implications to be drawn from the affixing of Schultz's name cannot be determined without knowing the time, place, and cir-

cumstances which characterized the act. It is submitted that it is inconceivable that there could be any evidence that would warrant a jury in finding that this paper was sealed by the plaintiff, and certainly a jury could not make that finding without evidence.

Even if the instrument had purported to be intended as a sealed instrument, if in fact no one had been authorized to affix the plaintiff's seal to it, it did not become the sealed instrument of the plaintiff.

Barnet v. *Abbott*, (1880) 53 Vt. 120.

There is no implication of law that the paper was the sealed instrument of the plaintiff because of the fact that it bore the seal of another.

State of Maryland v. *Humbird*, (1880) 54 Md. 327.

If in fact the plaintiff did not adopt a seal, the paper did not become the sealed instrument of the plaintiff by operation of law.

"Aside from this, the most that can be urged is, that the adoption of the seal was a question of fact to be submitted to a jury, . . ."

Hess's Estate, 150 Pa. State, 346, 350.

If the right of the defendant to have this case transferred to equity depended on the fact of a seal, that fact must be determined by the verdict of a jury.

The plaintiff has not waived a jury at any time.

The declaration did not allege that the release was under seal (pars. 36, 37, R. 10, 21). The answer alleged that it was under seal (R. 28), and that it was an integral part of the license granted to the Raytheon Manufacturing Company (R. 31, lines 29-30, R. 32, line 19; R. 33,

line 15) of Delaware. This indicated that the defendant was alleging the formal license to that company. The informal agreement was no part of the integer.

By Massachusetts practice applied under the Conformity Act, the defendant's allegation of a seal is deemed denied without the need of a replication (*Mass. General Laws* (Ter. *ed.* 1932), c. 231, s. 34), namely:—"Any new matter in avoidance of the action which the answer contains shall be considered to be denied by the plaintiff without a replication, unless the court, upon motion of the defendant, requires him to reply thereto, and to state what part, if any, he admits or denies."

An examination of the license to the Delaware corporation (R. 42, 50, 52) shows that it had as "an integral" part of the paper a release by the Delaware corporation. It had no other release as an integral part of it.

The Court of Appeals, sitting on an appeal in equity with the powers of that position as to facts, finds the fact to be that "an examination of the release discloses that there is no seal set opposite the signature of the plaintiff" (R. 72, lines 6-7).

The record contains no finding of fact that the plaintiff has adopted a seal or that the plaintiff has executed a release under seal. At no stage has any evidence been introduced on which any such finding could be made.

For the purposes of decision the Court of Appeals assumed, without evidence, that the judge of the District Court had treated the release as under seal and that plaintiff's counsel raised no question to the contrary. The assumption was not of consequence in view of the decision of the Circuit Court of Appeals; but it is respectfully submitted that the record does not warrant this assumption. There is nothing in the record to indicate how Judge Lowell reached his conclusion, or that he did

not reach his conclusion that the case should be transferred by ruling as a matter of law that as the action was for the benefit of the Delaware corporation the sealed release by the Delaware corporation operated to release the claim of the Massachusetts corporation, or by ruling as a matter of law that the case ought to be transferred irrespective of whether or not the release was under seal. Certainly, in view of the care taken to show by bill of exceptions that Judge Lowell had acted without evidence (R. 41, line 10), no assumption should be made that he made an unwarranted finding of fact.

If the plaintiff's seal is a prerequisite to the defendant's right to have the question of the validity of the release transferred to equity for trial, no such transfer should be made until a jury has decided that the release bore the seal of the plaintiff. It did not, in fact.

For this reason it is respectfully submitted that the order of transfer was erroneous and beyond the jurisdiction of the court.

THIRD

A RELEASE UNDER SEAL MAY BE HELD VOID FOR ENFORCEMENT BY A COURT OF LAW ON THE FACTS ALLEGED BY THE PLAINTIFF AND NOT YET HEARD BY ANY COURT.

As no trial or hearing of facts has been had, and as no evidence has been heard, the case is here on the allegations of the pleadings.

The plaintiff's allegation is that the plaintiff has never executed a valid release (R. 10, 21). The defendant's allegation is, that the plaintiff for a good and valuable consideration released the defendant and that said release was under seal (R. 28). Under the Massachusetts practice applied under the Conformity Act, the plaintiff is deemed, without the filing of any replication, to have denied these allegations of the defendant (*Mass. General Laws (Ter. ed. 1932)*, c. 231, s. 34), supra p. 22.

It is respectfully submitted that even if the defendant establishes in a court of law the controverted allegations that the release was for a good consideration, and for a valuable consideration, and was under seal, the plaintiff has the right to prove in a court of law the plaintiff's allegation (R. 10, 21), that the plaintiff has never executed a valid release.

This allegation is not limited in any way. It permits the introduction of evidence that the defendant itself was the one that affixed the name of the plaintiff or a seal to a purported release. It permits the showing of any ground of invalidity. It is broad enough to permit the introduction of evidence much more extensive than properly can be paraphrased even, in a pleading. The declaration contains a brief outline of some of the grounds of invalidity (R. 4-10, 14-20).

The defendant, when engaged in interstate and foreign commerce in different kinds of radio apparatus and in radio communication, formed the plan and conspired to suppress, restrict and destroy all competition of others in this commerce. This was not limited to tubes, or to sets, or to any other department. It related to this entire branch of commerce (R. 4). At the time, there were a large number of others engaged in this commerce in competition with the defendant and there was then an established prospect of a substantial expansion of this competition.

For the above purpose the defendant conspired with independent competitors to acquire their competitive rights including patent rights on competitive devices, and by this means the defendant obtained a complete monopoly of vendable radio receiving sets, and by reason thereof it exerted by its illegal acts, an illegal duress upon all those engaged in this branch of interstate commerce so that they were compelled to deal with the defendant and upon such terms as the defendant dictated. As a result of this mastery the defendant prceeded to acquire a monopoly of the commerce in radio receiving set tubes. One of the means to this end was to compel those who desired to obtain rights to manufacture and sell radio receiving sets, to enter into an illegally restrictive agreement, in substance and in practical effect upon condition to acquire tubes from the defendant only. In this way, the defendant expanded its monopoly of receiving sets, also to tubes. The monopoly of this entire commerce in radio apparatus was illegal, and effective. As a result, the plaintiff, not because of any economic pressure, as is argued for the defendant, but because of this illegal continuing monopolization of both and all departments of this commerce, was forced to execute a purported

release of claims to the defendant which was in fact void (R. 10, 21). The plaintiff did not, as alleged by the defendant (R. 28), receive either a good or a valuable consideration for this release. It was given for nothing. It was not a release given pursuant to a settlement of a disputable or disputed liability. The case is before the court on the allegations. They show a clear liability. No settlement of it was made. Nothing was paid the plaintiff for the release. The informal agreement (R. 10, 21, 52) shows that it was not intended as a release pursuant to a settlement. It was understood that the claim should remain open, unsatisfied in any part, and to be enforced on stated conditions.

If the court should enforce this release, it would deprive the plaintiff, without any consideration, of capital assets of a value of more than $9,000,000. Such a crippling of a competitor would go far toward cementing for all time the defendant's monopoly of tubes, of sets, and of all departments of this commerce, and toward depriving this commerce of any possibility of a non-tribute-paying operation.

The allegation is not that the license is unlawful. The release of all claims is not essential to the effectiveness or to the operation of the license. No such question is presented as that on which courts may have differed in such decisions as *Columbia Pictures Corporation* v. *Bi-Metallic Inv. Co.*, (D.C. Colo.—1930) 42 F. (2d) 873, and *Fox Film Corporation* v. *Muller*, (Minn.—1935) 255 N. W. 845, 260 N. W. 320, certiorari granted June 3, 1935, 55 Supreme Court Reporter, 924—No. 47 October Term 1935. The royalty paid by the licensee is the full equivalent of any patent right, if any, used by the licensee. The defendant is compensated fully and in the intended way, for this use and at the defendant's established rate

to others. The plaintiff has paid in full in royalties for the commodity received. Beyond and apart from this, the release, if the court assists the defendant to enforce it, is a misappropriation of the competitor's capital in return for nothing, an act wholly unnecessary to the license. It is a most effective weapon, if the court supports its validity, to end all possibility of competition in any department of this commerce and to insure the perfecting of this monopoly in all departments of it. It helps directly to maintain the monopoly. Preventing this monopoly violating the Anti-Trust Acts is "the dominant public interest" (*Steele* v. *Drummond*, 275 U. S. 199, 205) which constrains the court not to become a party to perpetuating this unlawful monopoly by enforcing the release. If the plaintiff has the upwards of $9,000,000 to which it is entitled, the public interests may have again the advantages of this competition.

The license, unless extended, was to terminate on January 1, 1934. (R. 50). The plaintiff if then possessed of more than $9,000,000 of additional capital, would be in a much more effective position to break the defendant's monopoly of all departments of this commerce and to restore to the public the advantages of competition therein.

The question, then, is, whether a court of law of the United States, without equity powers, is compelled to assist the wrongdoer by enforcing this release against the plaintiff and so to join in the subjugation of this competitor and in depriving the public of the benefits of this competition. This is the direct effect of the defendant's plan.

Evidently it is unnecessary to consider at this stage whether or not these facts constitute a good attack upon the release. The reason if any for transfer to equity is

that these facts, if proved, do constitute in equity a good attack upon the release. If they do not constitute a good attack in equity upon the release, there is no occasion for invoking equitable powers. It is to be assumed, therefore, that these facts, if proved, do constitute a good attack in equity upon the release. If so, and it be assumed for the moment that the equity powers of the United States courts were taken away, is there any principle that compels a court of law of the United States to give its assistance to the wrongdoer in the subjugation of the competitor, notwithstanding these facts, by enforcing the release, for this purpose, admittedly an inequitable release? It is submitted that there is no such principle.

The defendant says that a court of law must assist the wrongdoer in this case to deprive the public of the opportunity for effective competition, because the paper had a seal on it. No cases have been cited in support of such a proposition.

In *Continental Wall Paper Co.* v. *Voight & Sons Co.*, 212 U. S. 227, 241, 258, 260, the court, before declining its assistance, gave no consideration to whether or not the vicious contract was under seal. Granted that the making of the contract so far violates the Anti-Trust Acts that a court of equity will relieve against its enforcement, it is submitted that it is inconceivable that a court of law will insist on its enforcement by treating it as a bar at law, merely because it has a seal on it.

A sealed instrument should not be deemed in a court of law, any more impregnable than a payment of money.

If a payment of money is made under the compulsion of an illegal exaction, it may be recovered in an action at law.

Union Pacific Railroad Co. v. *Public Service Commission of Missouri*, 248 U. S. 67.

For a court of law to hold a release void, does not differ from its holding that money paid involuntarily can be recovered. One judgment holds void the apparent voluntariness of the payment of the money. The other holds void the apparent voluntariness of the execution of the release.

The brief for the defendant in this case seems to concede the applicability of the decisions as to instruments under seal which have been obtained by fraudulent inducements. These cases, if applicable, establish that there was no jurisdiction in equity in the case at bar.

In *Adamos* v. *New York Life Insurance Co.*, 293 U. S. 386, the court, without reference to the question whether or not the contract was under seal, held that a transfer to equity of the defence of fraudulent inducements to its making, was error and that the decree in equity for the cancellation of the contract should be reversed because the defence was fully available in the action at law. In *Enelow* v. *New York Life Insurance Co.*, 293 U. S. 379, the court points out more extensively that in determining whether a defence is legal or equitable "the test under § 274b is whether the defendant could have maintained a bill in equity on the same averments. The unequivocal language of the provision leaves no room for the argument that the substantive jurisdiction of equity was sought to be changed or enlarged" (383). . . . "In such a case, the defense of fraud is completely available in the action at law and a bill in equity would not lie to stay proceedings in that action in order to have the defense heard and determined in equity. *Insurance Co.* v. *Bailey*, 13 Wall. 616, 623; *Life Insurance Co.* v. *Bangs*,

103 U. S. 780, 782; *Cable* v. *United States Life Ins. Co.*, 191 U. S. 288, 305; *American Mills Co.* v. *American Surety Co.*, 260 U. S. 360, 363; *New York Life Ins. Co.* v. *Marshall*, 23 F. (2d) 225; *New York Life Ins. Co.* v. *Miller, supra.* Respondent [defendant] was in no better position under § 274b" (385). The court recognizes that there may be a right in equity where no action at law has been brought, in which to plead the fraud (384).

It is not to be supposed that the court would have refrained from mentioning that the contract was not under seal if that had been thought important.

The opinion in *Cable* v. *U. S. Life Ins. Co.*, contains no intimation that the decision is rested on the fact that the insurance policy was not under seal. It is cited above in *Enelow* v. *N. Y. Life Ins. Co.* in association with *American Mills Co.* v. *American Surety Co.*, a case in which the instrument was under seal.

There is no basis for distinguishing between an insurance policy, and a release as to its contestibility in a pending action at law.

If after the plaintiff at bar brought this action, and after the defendant had pleaded the release so that the issue was drawn at law, the plaintiff had brought a bill in equity to have the release cancelled because initially void and without consideration, it is submitted that the court would have dismissed the bill because the plaintiff had a plain, adequate, and complete remedy at law.

In *American Mills Co.* v. *American Surety Co. of New York*, 260 U. S. 360, 363, the court held that but for a waiver of the objection such a bill could not be maintained to cancel a guaranty bond **under seal** for fraudulent representations inducing its execution. The printed record shows the seal (p. 40, 247). The report of the same case in the Circuit Court of Appeals for the Second

Circuit (273 Fed. 67) shows that the instrument was under seal.

It is significant that this opinion was written by Mr. Chief Justice Taft who, twenty-four years before, had written the opinion in *Wagner* v. *National Life Ins. Co.*, (C.C.A. 6th-1898) 90 Fed. 395, 404, in which the court said: — "Our conclusion is, therefore, that it is proper in a suit at law for the plaintiff to meet a plea of release by a replication that the release was obtained by fraud, whether the fraud is in the execution, or in misrepresentation as to material facts inducing execution. We are glad to come to this conclusion, because it avoids circuity of action, and thus facilitates the administration of justice." In this conclusion, no distinction is made between a release not under seal and a release under seal. The opinion as a whole (399-404) shows that no distinction is intended and that the conclusion is meant to cover releases under seal as well as those not. The opinion gives elaborate consideration to prior decisions in England and in the United States. It draws attention to the distinction between a release under seal and one not. It calls attention to the fact that courts of law have gone farther in permitting the defeat at law for fraud of releases under seal, than of other specialties (401). No one reading the opinion can doubt that Mr. Chief Justice Taft when he wrote the decision in *American Mills Co.* v. *American Surety Co.* had formed the opinion at least twenty-four years before that a release even under seal could be avoided in a court of law without recourse to equity, by showing that its execution had been induced by false and fraudulent representations even falling short of those which would have sustained a plea of *non est factum*. Whether the court entertained the view that the statement in *George* v. *Tate*, 102 U. S. 564, 570, was not

the law, or that a distinction was to be made between a bond and a release, the opinion does not indicate. Notwithstanding what was said in that case, the natural significance of the opinion in *American Mills Co.* v. *American Surety Co.* written by the one who had considered the subject so thoroughly in *Wagner* v. *National Life Insurance Co.*, clearly is that fraud may be set up at law even if the instrument is under seal. It was in a case in which the instrument before the court was under seal.

In *Union Pacific Railway Co.* v. *Harris*, 158 U. S. 326, the court held that a replication to a release was good at law although it set up not only the temporary lack of contractual capacity in the plaintiff but also misrepresentation and fraud (330).

It is believed that since the decision in *American Mills Co.* v. *American Surety Co.* no Circuit Court of Appeals, with consideration for that decision, has decided that either fraud or duress, even falling short of that which would sustain a plea of *non est factum*, was not a legal defense.

On the other hand, in *Fidelity & Casualty Co. of New York* v. *Glenn*, (C.C.A. 4th-1925) 3 F. (2d) 913, the court held that where the defendant, sued on a bond under seal, set up fraudulent representations, the parties were entitled to a jury trial and that it was proper to refuse to transfer the case to equity.

The decisions of the Circuit Courts of Appeals, which the defendant has cited, before the decision in *American Mills Company* v. *American Surety Company* deal indiscriminately with releases under seal and those not under seal. They were directly in conflict with the decision in *Wagner* v. *National Life Insurance Co., supra.* They were also in conflict with the decisions of the Supreme Court in *Insurance Co.* v. *Bailey, supra,* and

Cable v. *U. S. Life Insurance Co., supra,* unless it be the law that although an insurance policy may be defeated at law by the defense of fraudulent representations, a release even not under seal may not be. The argument for the defendant at other points appears to concede that a release not under seal may be defeated at law by showing fraudulent representations inducing its execution.

In view of what the Supreme Court has said already in the cases cited, a seal is not enough to change this result.

If the question were approached on principle, it is respectfully submitted that the result would be the same. A release is a self-executing contract to forgive a liability. If it is effective, it is a valuable thing. For the defendant to obtain that valuable thing from the plaintiff by deceit or by the exercise of unlawful power, is an actionable tort at law, to the plaintiff. The damages resulting from that tort are at least co-extensive with the value of the liability which is wiped out if the release is held effective. They would be recoverable in an action at law. Nothing is gained by this second action at law when the result can be accomplished by holding that a court of law will not enforce a release obtained in this way. No help from equity is needed. In the simple case of an indigent and ill-equipped plaintiff injured by a powerful defendant and then apparently deprived of his rights without any consideration by a release fraudulently obtained by the defendant's over-zealous and dishonest claim agent, it would be a most undesirable result to hold that the plaintiff could not have the valued trial by jury and that a court of law could render him no assistance. An unstilted common law designed for doing justice and not for the artistic play of wits, would never reach such a result.

When there is added, the feature that the Court is asked to enforce this release to destroy the capital assets

of a competitor as an intentional step to emphasize and to perpetuate a monopoly of commerce, there is reached the point where the Court is asked to violate the well-established principle that it will not give its assistance to the carrying out of an illegal plan. A contract which is contrary to public policy is to be treated not as voidable, but as void. (*West* v. *Camden*, 135 U. S. 507, 520. *Woodstock Iron Co.* v. *Richmond and Danville Extension Co.*, 129 U. S. 643.)

It is not, as argued for the defendant, that the plaintiff is contending that a monopoly is an outlaw whose contracts will not be enforced. Such decisions as *A. B. Small Co.* v. *Lamborn & Co.*, 267 U. S. 248, *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, *Dennehy* v. *McNulta*, (C.C.A. 7th) 86 Fed. 825, certiorari denied 176 U. S. 683, *Columbia Pictures Corp.* v. *Bi-Metallic Inv. Co.*, (D.C. Colo.) 42 F. (2d) 873, *Gasoline Products Co., Inc.* v. *Champlin Refining Co.*, (D.C. Me.) 46 F. (2d) 511, 514, are not here questioned. No such contention is made. It is submitted only that a court of law will not assist a litigant in completing and in perpetuating an unlawful operation merely because a seal was put on the paper. *Continental Wall Paper Co.* v. *Voight & Sons Co.*, 212 U. S. 227, 260, decides that the court will not give its assistance where the paper is not under seal. The later decisions do not question the correctness of this decision but, on the contrary, they recognize it. The demands of public policy are too important to be defeated by a wafer.

However, the question is not whether a court of law should refuse its assistance to the enforcement of this release. It is only, whether it is impotent to refuse to enforce it, without the help of a court of equity, so that

it is necessary to send the case there for a decree to permit the court of law to refuse to help to perpetuate the monopoly.

No such step is necessary or jurisdictionally permissible.

Respectfully submitted,

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Attorneys for Respondent.

OPINION

SUPREME COURT OF THE UNITED STATES.

No. 127.—October Term, 1935.

Radio Corporation of America, Petitioner, *vs.* Raytheon Manufacturing Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[December 23, 1935.]

Mr. Justice Cardozo delivered the opinion of the Court.

The question is whether in the circumstances here exhibited the validity of a release pleaded by a defendant as a bar to a cause of action at law is triable in equity.

Plaintiff, respondent in this court, is a Massachusetts corporation, once known as Raytheon Manufacturing Company, now known as Raytheon, Inc. It sues for the benefit of Raytheon Manufacturing Company, a Delaware corporation, which by agreement is to receive the fruits of a recovery. The cause of action is under the anti-trust laws for treble the damages suffered by the plaintiff through a combination and monopoly in restraint of trade and commerce. 15 U. S. C., §§ 1, 2, 14, 15. The defendant, petitioner in this court, pleads as one of its defenses that after the cause of action had arisen the plaintiff without duress and for a valuable consideration signed and delivered to the defendant a general release under seal.

At this point there is need to recur to the allegations of the complaint. From them it appears that the defendant's monopoly became complete by the early part of 1928. The plaintiff's business had then been destroyed to its damage in excess of $3,000,000. "Wholly because of this destruction and of the illegal duress" imposed by the monopoly, the plaintiff and the Delaware corporation were compelled to seek and accept a license from the defendant and to execute a release. The complaint does not state whether the document was sealed. "The illegal duress aforesaid by the defendant rendered said release void, and the plaintiff has never executed a valid release of said claim." Moreover, there was an agreement upon "the execution of the void release" that its effect in stated contingencies was to be subject to exceptions. The

release was not to be pleaded as a bar if there was "pecuniary recognition" by the defendant of the rights of other claimants. Such "pecuniary recognition" there has been to the extent of $1,600,000, with the result that plaintiff may recover within that limit, even if not beyond. All this appears from the complaint with many amplifying statements unimportant here and now.

The issues being thus defined, the defendant moved upon the pleadings to transfer the case to equity for a preliminary hearing upon the validity of the release. This motion was granted against the plaintiff's opposition. Thereafter plaintiff moved to vacate or supersede the transfer, disclaiming "any right or remedy in this case, because of duress, to be relieved from such operation as said release would have at law had there been no duress."* This motion was denied. Thereafter plaintiff moved for a final decree dismissing it from equity, and reiterated its disclaimer of any right or remedy not belonging to it at law. This motion also was denied. At the same time a decree was entered at the instance of the defendant adjudging that the release as set forth in the defendant's answer was "valid and binding", and sending the case back to law for further proceedings. From the decree and the supporting orders there was an appeal by the plaintiff to the Circuit Court of Appeals for the First Circuit, where the decree and orders were reversed. 76 F. (2d) 943. The opinion covers a wide range. It considers the distinction between fraud in the "factum" and fraud in the "inducement" as affecting the power of a court of law to nullify a release not otherwise illegal, and the distinction for the same purpose between sealed and unsealed instruments. It suggests, without deciding, that the presence or absence of a seal, whatever significance may have attached thereto of old, has now ceased to be important. In the end it holds, however, that the release signed by the plaintiff was so connected with the unlawful combination and monopoly as to be inoperative at law,

*For greater certainty we add the next succeeding paragraph:

"Following this disclaimer, the issue, as to duress, for trial is whether the purported release which was obtained by the defendant from the plaintiff was originally obtained in fact by the duress of a power obtained by the defendant by unlawfully restraining interstate trade and substantially lessening competition therein by contract, combination or conspiracy or otherwise or by monopolizing or attempting to monopolize interstate trade in violation of Code of Laws of the United States, Title 15, Chapter 1, sections 1, 2 and 14, or any of them, and if so whether a court of law, not equity, of the United States will adjudge originally valid a release so obtained, notwithstanding such duress."

irrespective of the possibility of avoiding it in equity. A writ of certiorari issued to resolve a claim of conflict with decisions of this court.

The answer with its plea in bar will be searched in vain for the suggestion of an equitable defense. A release under seal is a good defense at law, unless its effect is overcome by new matter in avoidance. This will happen, for illustration, when it is so much a part of an illegal transaction as to be void in its inception. If it is subject to that taint, a court of law is competent to put it out of the way. We assume that a like competence exists in other circumstances. True there are times when a release, unassailable at law, is voidable in equity, and in equity only. If the plaintiff were demanding relief upon that basis, the equitable issue would have to be disposed of at the beginning. *American Mills Co.* v. *American Surety Co.*, 260 U. S. 360, 363; *Liberty Oil Co.* v. *Condon National Bank*, 260 U. S. 235, 242; *Enelow* v. *New York Life Insurance Co.*, 293 U. S. 379, 383; *Adamos* v. *New York Life Insurance Co.*, 293 U. S. 386. With the parties so arrayed, the situation would be the same as if a bill in equity had been filed to set aside the release, the suitor thus removing a bar to a recovery. *Enelow* v. *New York Life Insurance Co., supra*, p. 382. But the plaintiff disclaims any title to relief upon that basis. It insists that the release is void at law on one or other of two grounds, either because not sealed by the maker, or because tainted with the same illegality as the illegal combination. It concedes here, as it did in the District Court, that if unable to prevail at law, it is unable to prevail anywhere. Before the days of equitable defenses no one would have insisted that a suitor who refused to file a bill in chancery could be sent there against his will. The only penalty for refusing to go would be the loss of any remedy peculiar to a court of equity. There is no other penalty now after the reforms of the Judicial Code. The defendant, setting up a legal defense, the bar of a release, would have us force upon the plaintiff an equitable replication which the plaintiff disavows. Accepting the disavowal, a court of equity must decline at this stage to adjudicate the validity of the release or its effect upon the parties, leaving that issue along with others to adjudication at law.

In thus delimiting the issues we delimit at the same time the scope of our decision. We do not attempt to say whether the release will collapse upon the showing of an illegal combination

or will retain an independent life. That is matter for the trial at law, where the bond between monopoly and surrender can be shown with certainty and fulness. Till then it will be best to put aside as premature not a little that is said in the opinion of the court below. Enough for present purposes that there are issues triable at law, and none triable in equity. We leave our ruling there.

The decree of the Circuit Court of Appeals is accordingly

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.